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ABSTRACT

In this commencement address given by the Assistant Attorney General, Civil Rights Division of the Department of Justice, a brief review of the Younger vs. Harris case is given. In this case, the Supreme Court ruled that federal courts could not issue injunctions against state criminal proceedings on the ground that such prosecutions would result in a deprivation of the defendant's constitutional rights. The Younger Doctrine, or "Our Federalism" as it has been called contains two principal operating assumptions. First, it assumes that state courts, as well as federal courts have the authority, responsibility and competence to vindicate federal civil rights; secondly, it assumes that, to the extent that state courts fail to protect federal civil rights, such lapses can be remedied upon appellate review by the U.S. Supreme Court. Days argues that there is another doctrinal thread in the evolution of constitutional principles in the U.S. that undercuts the Younger or "Our Federalism" approach. The Court's approach seems to reflect its belief that only the most serious, egregious and systematic forms of civil rights violations deserve federal judicial remediation. There is a danger that state officials will not exercise their power to sue immediately upon discovering apparent civil rights violations. It is important that better state laws and procedures be developed to insure that individual civil rights are protected. It is concluded that fair and accessible state remedies are not inferior to approaches established uniformly by Federal Government action. (Author/AM)

Department of Justice

COMMENCEMENT ADDRESS

BY

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BEFORE THE

TEMPLE UNIVERSITY SCHOOL OF LAW
PHILADELPHIA, PENNSYLVANIA

ON

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In 1971, the Supreme Court decided a case arising out of California which raised the issue of whether a federal district court had the authority to enjoin a state criminal proceeding on the grounds that such a prosecution would work a deprivation of the defendant's constitutional rights. In that case, Younger v. Harris, */ the court held that, as a general rule, federal courts could not issue such injunctions, relying upon what it described as the principles of equity, comity and federalism to justify its conclusion. The Younger Doctrine, or "Our Federalism," as Mr. Justice Black called it, contains two principal operating assumptions: first, it assumes that state courts, as well as federal courts, have the authority, responsibility and competence to vindicate federal civil rights; secondly, it assumes that, to the extent that state courts fail to protect federal civil rights, such lapses can be remedied upon appellate review by the United States Supreme Court.

It might be argued, and I do so today, that there is another doctrinal thread in the evolution of constitutional principles in the United States that undercuts the Younger, "Our Federalism" approach. In fact, the Supreme Court articulated it in 1972, only a year after Younger was decided. The Court pointed out with

*/ Younger v. Harris, 401 U.S. 37 (1971).

respect to a federal statute enacted in 1871 to provide redress in federal court for deprivations of civil rights caused by persons acting with state authority that:

> [The statute] was thus a product of a vast transformation from the concepts of federalism that had prevailed in the 18th century ... The very purpose of [The statute] was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial." Mitchum v. Foster 407 U.S. 225, 242 (1972)

Whatever the continuing vitality of this second concept may be in the abstract, since 1972 the Supreme Court has opted largely in favor of an expansion of the Younger approach in a number of private suits raising civil rights issues, both criminal and civil. The Court's approach seems to reflect its belief that only the most serious, egregious and systemic forms of civil rights violations deserve federal judicial remediation.

In my position as Assistant Attorney General for Civil Rights, I see the "Our Federalism" issue in a somewhat different context. Since the Civil War, Congress has invested the Attorney General with civil and criminal authority to sue state and local governments to prevent or remedy civil rights violations. For example, the Voting Rights Act of 1965 gives the Attorney General, and by his delegation, the Assistant Attorney General for Civil Rights,

authority to accept or reject proposed electoral changes from cities, counties and states covered by the Act. The Civil Rights Act of 1964 gives him the right to sue to end segregation in state and local public facilities. - jails and prisons are often targets of suits brought pursuant to this authority. That Act, as amended, also grants the Attorney General the right to sue state and local governments thought to be engaged in systematic employment discrimination based upon race, sex, national origin, or religion. We are seeking specific Congressional authority to initiate suits or intervene in suits brought by others alleging systematic violations of the rights of the institutionalized persons in prisons, mental institutions, reformatories and nursing homes.

I think that my short three months in office have provided me with enough experience in dealing with state and local officials - with Governors, Attorneys General and Mayors - to assert categorically a fact that should come as no surprise to you: these officials vigorously object to the exercise of the federal powers to vindicate the civil rights I have described. Their arguments track those implicit, if not explicit, in the Younger cases. First, they avow their commitment to upholding and defending the Constitution and laws of the United States, including those relating to civil rights. They swore to do so upon taking office, as did I, they

point out. Secondly, they contend that state processes should be proven inadequate or unwilling to protect civil rights before the federal government takes action. The Justice Department should identify where their institutions are failing in this regard and give them enough time to clean house, not sue immediately upon discovering apparent civil rights violations, as they allege the "Feds" are wont to do. I do not, for a moment, question the good faith of these officials nor do I mean to contend that the federal government's deferral to state procedures would in all instances be unwise. I do believe, however, that in many ways, with respect to remedying many forms of discrimination and denial of civil rights, state laws, administrative procedures and judicial systems do not appear to be up to the challenge. I, for one, would be delighted were things otherwise, for, at heart, I suppose I believe in "Our Federalism."

Since all of you have been sitting patiently in gowns that would rival a sauna bath, on seats hard enough to force confessions from even the innocent after a few hours, wondering what all this babbling of a bureaucrat has to do with you, let me turn to that issue. It is very simple: you will be the Governors, Attorneys General, Mayors and State Legislators of your generation, not to mention those of you who will occupy high federal office in the future. As lawyers, you will be in a position to develop state laws and

procedures in ways better tailored than is presently the case to insure that civil rights are protected. You can bring the state test cases designed to advance this cause. If you fail in this respect, two unfortunate results are inevitable. First, persons genuinely aggrieved by deprivations of their civil rights will have neither a federal nor a state forum in which to seek redress. Such an outcome is repugnant to the fundamental principles of our Nation, rendering the promises of the Younger cases hollow indeed. Secondly, the federal government will be required to shoulder a greater and greater burden for insuring that state and local officials do not operate in ways that violate basic civil rights and civil liberties. I cannot imagine that fair and accessible state remedies, structured to address civil rights issues forthrightly yet in ways sensitive to the local context, would be inferior to approaches established uniformly by Federal Government action.

You decide.